IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 21270 of 2006(F)

AGAINST THE ORDER IN EP.36/2004 IN OS.200/1995 of SUB COURT, PALA

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PETITIONER:

ABEY JOSEPH, S/O. JOSEPH,
AGED 42, RESIDING AT KARAMAYIL HOUSE,
PALA.

BY ADV. SRI.K.C.ELDHO

RESPONDENT:

M/S.CEMENT MARKETING AGENCY
A FIRM REGISTERED CARRYING ON BUSINESS
IN PARTNERSHIP IN CEMENT WITH ITS REGISTERED
OFFICE AT THEKKANATH BUILDING,
THRIPUNITHURA ROAD, KOCHI-36, REPRESENTED
BY ITS MANAGING PARTNER.

BY ADV. SRI.K.V.VAIDYANATHAN
SRI.V.J.JOHN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.21270/2006 F

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE DECREE IN O.S.NO.200 OF 1995 DTD. 8/12/1995.

EXT.P2: COPY OF THE JUDGMENT IN O.S.200 OF 1995 DTD. 8/12/1995.

EXT.P3: COPY OF THE DEATH CERTIFICATE NO.257/85 DTD.7/05/85 OF LATE JOSEPH, FATHER OF THE PETITIONER.

EXT.P4: COPY OF THE REVIEW PETITION VIDE E.A.KNO.159/06 IN E.P.NO.36/04 FILED BY THE PETITIONER.

EXT.P5: COPY OF THE ORDER DTD. 29/07/2006 IN E.P.NO.36/2004 IN O.S.NO.200/1995 ON THE FILE OF SUB COURT, PALA.

EXT.P6: COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENT IN I.A.NO.6313/2004 IN O.S.NO.200/1995 ON THE FILE OF SUB COURT, PALA.

RESPONDENT'S EXHIBITS:

EXT.R1: COPY OF THE COUNTER AFFIDAVIT FILED BY RESPONDENT IN I.A.NO.6312/2004 IN O.S.200/1995 OF 1ST ADDL.SUB COURT, ERNAKULAM.

EXT.R2: COPY OF THE COUNTER AFFIDAVIT FILED BY RESPONDENT IN I.A.NO.6313/2004 IN O.S.200/1995 OF 1ST ADDL.SUB COURT, ERNAKULAM.

EXT.R3: COPY OF THE COUNTER AFFIDAVIT FILED BY RESPONDENT IN I.A.NO.6314/2004 IN O.S.200/1995 OF 1ST ADDL.SUB COURT, ERNAKULAM.

EXT.R4: COPY OF THE ORDER PASSED I N I.A.NO.6312/2004 IN O.S.200/ 1995.

EXT.R5: COPY OF THE ORDER PASSED IN I.A.NO.6313/2004 IN O.S.200/ 1995.

EXT.R6: COPY OF THE ORDER PASSED IN I.A.NO.6314/2004 IN O.S.200/ 1995.

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.21270 of 2006

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Dated: 6th July, 2007

JUDGMENT

Notwithstanding the strenuous and attractive submissions addressed before me by Mr.K.C.Eldho, learned counsel for the petitioner, I am not inclined to hold that Ext.P5 order is vitiated by infirmity to such an extent as to justify interference by this court in the supervisory jurisdiction of this court under Article 227 of the Constitution. The supervisory jurisdiction will be invoked only in exceptional circumstances, i.e., only when it is found that the order violates law or will result in gross injustice or failure of justice. In Ext.P5 good reasons are given by the court below to support the decision taken. I approve Ext.P5 and refuse to grant the relief sought for in the Writ Petition. It is noticed that while admitting the Writ Petition this court stayed Ext.P5 for six months on cndition that the petitioner pays to the decree-holder a sum of Rs.10,000/- on or before 11.10.2006. Mr.V.J.John, counsel for the respondent submits that the above condition was complied with. Under the above circumstances and in view of the obvious position that the petitioner is not in affluent circumstances, I dispose of the Writ Petition directing that the order of stay presently granted will continue upon

the petitioner complying with the following conditions:

The petitioner will remit every month commencing from 1.8.2007 a sum of Rs.7500/- towards the decree debt either directly to the decree-holder or through his counsel in this court. If he commits any two defaults, he will forfeit the benefit of this order. Under such an event the impugned order will become operative and the court below is permitted to continue the execution from the stage at which it was stayed by this court. Once the petitioner is confident that almost the entire amount is remitted, it is open to him to file an application before the court below for recording satisfaction. If such an application is received, the execution court will invite objections to that application from the decree-holder, hear both sides and take a decision on the same.

srd **PIUS C.KURIAKOSE, JUDGE**